

FILED

JUN 16 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

LENOU PHRASAVATH,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75587

Agency No. A72-682-340

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 12, 2006^{**}

Before: KLEINFELD, PAEZ, and BERZON, Circuit Judges.

Lenou Phrasavath, a native and citizen of Laos, petitions for review of an order by the Board of Immigration Appeals (“BIA”) denying as untimely his motion to reopen for the purpose of seeking adjustment of status. We have jurisdiction pursuant to 8 U.S.C. § 1252, and deny the petition for review.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Reviewing de novo, *see Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006), we reject Phrasavath's contention that his due process rights were violated by the BIA's decision. Phrasavath has offered no explanation for why his motion to reopen was not filed until January 21, 2004, more than a year after the BIA's dismissal of his appeal. None of the pertinent supporting evidence submitted with the motion to reopen was unavailable prior to the BIA's December 23, 2002 decision. The BIA therefore properly applied the filing deadline of 8 C.F.R. § 1003.2(c)(2) to deny Phrasavath's motion to reopen.

PETITION FOR REVIEW DENIED.